



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NORTHWESTERN DIVISION
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JUL 16 2015

Mr. William Stelle
Regional Administrator
National Marine Fisheries Service, West Coast Region
7600 Sand Point Way Northeast
Seattle, WA 98115

Dear Mr. Stelle,

I appreciate your leadership and the efforts of your staff in working with the Northwestern Division on the complex challenges we face regulating activities under the Endangered Species Act (ESA) and the Clean Water Act (CWA), respectively, in the state of Washington.

As you know, the Seattle District uses the Mean Higher High Water (MHHW) to establish federal jurisdiction under Section 404 of the CWA. In your letter to me dated March 16, 2015, you suggest that the usage of the Highest Astronomical Tide (HAT) may be a more appropriate jurisdictional boundary.

I am writing to you today to invite you and your staff to join a regional dialogue regarding the Corps' landward extent of CWA Section 404 jurisdiction in marine and estuarine areas in Puget Sound, as you specifically referenced, but also the entire state of Washington. The Seattle District has used MHHW to demarcate the landward extent of our CWA Section 404 jurisdiction for several decades; and it has been an appropriate standard. At the same time, I am open to regional discussion regarding our technical interpretation and application of discretion as described in 33 Code of Federal Regulations, Part 328 – Definitions of Waters of the United States.

You have noted that the HAT elevation ranges from 1.3 to 2.5 feet higher than MHHW across the Puget Sound, depending on its distance from the ocean. My staff completed a limited analysis of MHHW vs. HAT, and also looked at a measure incorporating the periodic spring tides, which are typically one foot higher than MHHW across the Puget Sound. Currently, I do not believe that HAT, an extremely rare high tide that occurs once every 18 years, can be justified as the appropriate jurisdictional limit under Section 404 of the CWA or its implementing regulations. However, I am willing to consider all information obtained through a regional discussion that would include NMFS, the Environmental Protection Agency Region 10, the State of Washington and others. Furthermore, the dialogue should explore a variety of options, to include the application of the independent authorities of your agency, EPA and the State of Washington in order to achieve your stated goal of increased habitat protection in this important marine supra-tidal area.

Any potential change in our technical characterization of the Corps' jurisdictional limits would potentially affect the regulation of the Puget Sound and Washington's Coastal tidelands. Because of this, my intention is to conduct an open, transparent regional discussion of the issue. I look forward to our continued partnership and specifically to opening a regional dialogue on this issue.

Sincerely,

John S. Kem
Brigadier General, US Army
Division Commander

